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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/116,537	07/16/98	SAMARAS	G 389301
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PM92/0216

EXAMINER

ARK, D

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

02/16/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/116,537**

Applicant  
**Samaras**

Examiner  
**Darren Ark**

Group Art Unit  
**3643**



☒ Responsive to communication(s) filed on 1/28/00

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-22 and 25-28 is/are pending in the application.

Of the above, claim(s) 3, 10-14, 18, and 19 is/are withdrawn from consideration.

☒ Claim(s) 15-17, 20-22, and 25-28 is/are allowed.

☒ Claim(s) 1 and 7-9 is/are rejected.

☒ Claim(s) 2 and 4-6 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Election/Restriction*

1. Claims 3, 10-14, 18-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected Species. Election was made **without** traverse in Paper No. 4.

### *Drawings*

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 7/14/99 have been approved by the examiner.

### *Claim Rejections - 35 U.S.C. § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lanius 5,274,942.

Lanius discloses a body housing (14), a head assy. with a head and neck (30 which is capable of being blown by the wind), connection means (62, 70, 74, 66 & pins 78, 82) for connecting the head assembly to the body housing which allows for

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movement of the head through a range of motion by wind (capable of being blown by wind to move in a range of motion which is transverse to 58), and counterbalancing means including an arm (54) connected to the neck at one end (90), and a weight (34, 38, 42) at the opposite end (38) for balancing the head assembly in a neutral position (balances against forces exerted via 94) at an intermediate position along the range of motion with respect to the body housing at the connection means. Lanius discloses the head assembly which can move from the neutral position forward or rearward along the range of motion in response to wind and without any external force other than gravity (the weight 34 is capable of balancing the head assembly at an intermediate position along the range of motion in response to a force such as the wind [given amount of wind force compatible with the amount of weight 34 to cause balancing of head assy.] so that the head can move as claimed, and that in response to wind the head assembly is allowed to move forward and rearward).

In reference to claim 7, Lanius discloses a support stake (generally 114).

5. Claims 1, 7, 8 rejected under 35 U.S.C. 102(b) as being clearly anticipated by McKinney 4,965,953.

McKinney discloses a body housing (12), a head assy. with a head and neck (14 which is capable of being blown by the wind), connection means (38) for connecting the head assembly to the body housing which allows for movement of the head through a range of motion by wind (capable of being blown by wind to move in a range of motion which is transverse to 38), and counterbalancing means including an arm (40)

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connected to the neck at one end (42), and a weight (24) at the opposite end for balancing the head assembly at an intermediate position along the range of motion (24, 40 are capable of balancing the head assembly at a neutral position when a force compatible with the spring constant of 40 causes the head assembly to be at a neutral position) within the range of motion with respect to the body housing at the connection means, so the head assembly can move from the neutral position forward or rearward along the range of motion in response to wind (wind can blow the head assy. forward and rearward from the neutral position).

In reference to claim 7, McKinney discloses a support stake (generally 16).

In reference to claim 8, McKinney discloses a spring (40) attached to the upper end of the stake (at 24) against a seat (42).

### ***Claim Rejections - 35 U.S.C. § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lanius 5,274,942 in view of Balmer 5,191,730.

Lanius does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene)

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attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of Lanius in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney 4,965,953 in view of Balmer 5,191,730.

McKinney does not disclose a plastic sheet attached to the body housing. Balmer discloses a plastic sheet (wing elements 13, 14 made of polypropylene or polyethylene) attached to the body housing (10). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the plastic sheet of Balmer and attach it to the body housing of McKinney in order to provide more life-like decoys with wing elements which are able to move under the influence of very little wind.

***Allowable Subject Matter***

9. Claims 15-17, 20-22, 25-28 are allowed.

10. The following is an examiner's statement of reasons for allowance:

In reference to claim 15, the prior art of record does not disclose a method for using a decoy comprising attaching a hook to the housing above the open front end, attaching a loop to the neck, attaching a counterweight, by means of an arm, to the

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head and neck assembly, and hanging the head and neck assembly from the housing by placing the loop on the hook.

In reference to claim 21, the prior art of record does not disclose a decoy apparatus comprising connection means for connecting the head assembly to the body housing which allows for movement of the head, by wind, both up and down and side to side with respect to the body housing and counterbalancing means including an arm connected to the neck at one end, and a weight at the opposite end for balancing the head assembly with respect to the body housing at the connection means.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

11. Claims 2, 4-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Darren Ark** whose telephone number is **(703) 305-3733**. The examiner can normally be reached on **Monday-Friday** from **8:30-6:00**.

DWA DWA

February 13, 2000

Darren W. Ark  
Darren W. Ark